

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DONALD MICHAEL OUTLAW,	:	
Plaintiff,	:	
	:	
v.	:	Civil Action
	:	No. 21-1290
	:	
CITY OF PHILADELPHIA, et al.,	:	
Defendants.	:	
	:	

ORDER

AND NOW, this _____ day of _____, 2022 upon consideration of Defendants' Motion for Leave to Conduct Out-of-Time Deposition of Charles Paladino ("Motion"), it is **HEREBY ORDERED** that the Motion is **GRANTED**.

IT IS FURTHER ORDERED that Defendants shall be allowed to depose Mr. Paladino, who is currently in the custody of the Pennsylvania Department of Corrections ("PA DOC"), on or before _____ (date), provided that PA DOC has availability for them to do so.

BY THE COURT:

CHAD F. KENNEY, JR.

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	:	Civil Action
v.	:	No. 21-1290
	:	
CITY OF PHILADELPHIA, et al.,	:	
Defendants.	:	
	:	

MOTION FOR LEAVE TO CONDUCT OUT-OF-TIME DEPOSITION OF CHARLES PALADINO

1. On August 17, 2022, Defendants filed an Emergency Motion to Modify the Court’s Order Granting Defendants’ Motion to Depose Charles Paladino (“Emergency Motion”) (ECF No. 124), after learning that Mr. Paladino had been transferred from a Pennsylvania Department of Corrections facility to York County Prison (“York County Prison” or “Prison”).¹ The following day, the Court granted Defendants’ Emergency Motion (ECF No. 125).

2. Upon entry of the Court’s Order on August 18, 2022, Defendants’ counsel furnished a copy to Shawn Rohrbaugh, Intelligence and Security Commander at York County Prison, with whom they had been communicating. *See* Ex. A (email correspondence attaching Order). Soon thereafter, Defendants’ counsel scheduled the deposition of Charles Paladino for August 25, 2022, the first date that Plaintiff’s counsel told Defendants’ counsel that Plaintiffs’ counsel were available. *See* Ex. B (email correspondence attaching subpoena).

3. After scheduling of the deposition, Defendants’ counsel saw an entry on Mr. Paladino’s Court of Common Pleas docket indicating that a “transportation order” had been

¹ Defendants assume the Court’s familiarity with the content and circumstances of that motion, and Defendants do not repeat them herein.

entered that same day in Mr. Paladino's case. *See Ex. C at 2* (email correspondence).

Defendants' counsel immediately contacted Commander Rohrbaugh to confirm that the entered transportation order would not interfere with the stated ability of York County Prison to keep Mr. Paladino in its custody until after the deposition occurred. *See id.*

4. On August 19, 2022, Commander Rohrbaugh responded, stating, "According to the records captain [Mr. Paladino] will remain in YCP until after the deposition. That order has been in the system to allow us to return the inmate to DOC custody, but we can arrange a transport later." *See id.* Yesterday, Defendants' counsel provided a link via email to allow for the stenographer and videographer's participation at today's deposition.² *See id.* at 1.

5. When counsel arrived at York County Prison this morning, they were informed that Mr. Paladino was returned to SCI Smithfield upon of the transportation order. This is the first that counsel for Defendants was made aware that Mr. Paladino had departed from York County Prison. Counsel for Defendants then immediately contacted SCI Smithfield to confirm Mr. Paladino's presence and arrange for his deposition to be rescheduled there.

6. During that telephone call, SCI Smithfield's representative confirmed that Mr. Paladino is presently at SCI Smithfield. The representative also informed Defendants' counsel that the facility will not be able to conduct a remote video deposition until Thursday/Friday next week and will need to split the deposition over a two-day period on September 1 and 2, 2022.³

² Per the instructions and requirements of York County Prison, the deposition was arranged such that the stenographer and videographer would take part by teleconference, with counsel physically present at York County Prison.

³ The time slots available are 8:30 am to 10:30 am on September 1, 2022 and 8:00 am to 11:00 am and 1:00 to 4:00 pm on September 2, 2022. There is no availability for a full seven hours on a single day, and Defendants' counsel was informed that the scheduled time slots on September 2, 2022 could be truncated further if court hearings run longer than anticipated. Defendants' counsel inquired about whether an in-person deposition could be conducted earlier but was told that SCI Smithfield is a "quarantined" facility, precluding this option.

7. As SCI Smithfield's representative requested that Defendants' counsel confirm as soon as possible that the proposed dates and times on September 1 and 2, 2022 work with opposing counsel's schedules, Defendants' counsel immediately emailed Plaintiff's counsel to confirm their ability for those dates. *See Ex. D* (email correspondence). Plaintiffs' counsel has not yet responded to that email.

8. Although Defendants recognize that it appears logistically impossible to depose Mr. Paladino until after the formal close of the fact discovery period, Mr. Paladino is the single most central third-party witness in the case, and Defendants have been extraordinarily diligent in seeking to secure his deposition since March. Further, it would be inequitable for Plaintiff's counsel to be afforded the opportunity to depose Mr. Paladino prior to trial for a full seven hours without affording Defendants the opportunity to similarly depose him.

WHEREFORE, Defendants respectfully requests that the Court grant their Motion for Leave to Conduct Out-of-Time Deposition of Charles Paladino.

Date: August 25, 2022

Respectfully submitted,

/s/ Danielle B. Rosenthal
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	:	

CERTIFICATE OF SERVICE

I hereby certify that on the date below Defendants' Motion for Leave to Conduct Out-of-Time Deposition of Charles Paladino was filed via the Court's electronic filing system and is available for downloading by all parties of record.

Date: August 25, 2022

Respectfully submitted,

/s/ Danielle B. Rosenthal
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